

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

PETER NEWMAN,	:	Case No. 3:18-cv-252
	:	
Plaintiff,	:	Judge Thomas M. Rose
	:	
v.	:	
	:	
UNIVERSITY OF DAYTON, et al.,	:	
	:	
Defendants.	:	

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**ENTRY AND ORDER ADOPTING REPORT & RECOMMENDATIONS (DOC. 7), GRANTING MOTION TO DISMISS (DOC. 8), DISMISSING COMPLAINT (DOC. 1) WITHOUT PREJUDICE AND TERMINATING CASE**

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This case is before the Court on the Report & Recommendations (Doc. 7) entered by Magistrate Judge Sharon L. Ovington and the Motion to Dismiss (Doc. 8) filed by Plaintiff Peter Newman. Magistrate Judge Ovington previously ordered Plaintiff to show cause, not later than January 7, 2019, why this case should not be dismissed for failure to prosecute. The Order to Show Cause explained that Plaintiff had not returned to the Clerk of Court a summons and other forms necessary to effect timely service, and more than 90 days had passed without proof of service being entered in the record. Plaintiff failed to timely respond to the Order to Show Cause, but later indicated to the Court during a phone call that he intended to file a motion for extension of time to complete service. Plaintiff failed to file any such motion. As a result, Magistrate Judge Ovington entered the Report & Recommendations (Doc. 7), which recommends that Plaintiff's Complaint be dismissed for failure to prosecute and the case be terminated. Two days later, Plaintiff filed a Motion to Dismiss (Doc. 8) under Federal Rule of Civil Procedure 41 (a)(1)(A). Plaintiff apologizes for his failure to prosecute and requests a dismissal without prejudice.

Plaintiff therefore does not object to termination of this case but requests that the Complaint's dismissal be without prejudice.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court made a *de novo* review of the record in this case. Upon said review, the Court **ADOPTS** the Report & Recommendations (Doc. 7) and **GRANTS** the Motion to Dismiss (Doc. 8), which the Court construes as a request that the Complaint be dismissed without prejudice. Accordingly:

1. Plaintiff's Complaint (Doc. 1) is **DISMISSED WITHOUT PREJUDICE**; and
2. This case is **TERMINATED** on the Court's docket.

**DONE** and **ORDERED** in Dayton, Ohio, this Monday, February 4, 2019.

s/Thomas M. Rose

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE